

ROBERT M. BURSKY (RM8920)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Case No. 17-cv-09552-GHW
SECURITIES AND EXCHANGE COMMISSION,

: Plaintiff,
-against- :
: **AFFIDAVIT OF DEFENDANT**
: **ZACHARY S. BERKEY**

ZACHARY S. BERKEY and DANIEL T. FISCHER,

: Defendants.
-----X

STATE OF NEW YORK)

.:ss

COUNTY OF NASSAU

Defendant Zachary S. Berkey, being duly sworn, deposes and says:

1. I am the defendant in this action.
2. I have personal knowledge of the facts set forth below.
3. I submit this affidavit in opposition to Plaintiff's motion for disgorgement, prejudgment interest and penalties as to kind and/or amount.
4. Accompanying this affidavit as Exhibit A is a true and correct copy of my filed 2017 Federal Tax return reflecting my income that year.
5. Accompanying this affidavit as Exhibit B is a true and correct copy of my 2018 W-2 Federal Tax return reflecting my income last year. (I have not filed my 2018 tax return yet).

6. Accompanying this affidavit as Exhibit C is a true and correct copy of my most recent pay stub showing my earnings to date this year.

7. Accompanying this affidavit as Exhibit D is a true and correct copy of the first page of my most recent 401(k) retirement account statement.

8. Accompanying this affidavit as Exhibit E is a true and correct copy of my bank account statements for all of 2018 and January 2019.

9. Accompanying this affidavit as Exhibit F is a true and correct copy of a spreadsheet I prepared two days ago showing my current debts.

10. Accompanying this affidavit as Exhibit G is a true and correct of pertinent pages from an SEC financial disclosure template form that I completed two days ago disclosing my current financial condition.

11. I currently work in sales. My base salary is \$30,000 annually. Any and all additional compensation I earn is performance-based; i.e., commissions.

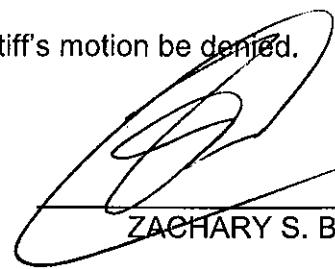
12. I have two dependent children for who I must pay child support

13. I had to borrow money from my mother and aunt in order to have the advice of counsel to represent me in this action and to see me through to its conclusion.

14. I have no assets other than as disclosed.

15. I respectfully submit that my financial condition as reflected in these documents speaks for itself.

16. I respectfully request that Plaintiff's motion be denied.



ZACHARY S. BERKEY

Sworn to before me this

1st day of March 2019



Notary Public, State of New York

STEPHANIE INGIGNERI
Notary Public, State of New York
No. 01IN6183715
Qualified in Nassau County
Commission Expires: 3/24/2020